NO. 84-135

TWENTIETH CENTURY TRAVEL ADVISORS, INC., A CALIFORNIA CORPORATION, dba TENDER LOVING CARE; L. A. MARK ROY CORP., A CALIFORNIA CORPORATION, dba CIRCUS MAXIMUS; JUNG SIK HAN, an individual, dba TOKYO MASSAGE; and FERNANDO AGUDELO, an individual, dba WEST L.A. MASSAGE,

Petitioners

vs.

PETER PITCHESS, individually, and in his official capacity as SHERIFF OF LOS ANGELES COUNTY, STATE OF CALIFORNIA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ANTHONY MICHAEL GLASSMAN
STEPHEN J. RAWSON
GLASSMAN & BROWNING, INC.
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Attorneys for Petitioners

QUESTION FOR REVIEW

Whether a massage parlor closing hour ordinance, which is justified only by the presumption that there is a high rate of crime at such businesses, is rational in light of the admission that massage establishments do not pose law enforcement problems significantly different from other businesses.

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TABLE OF AUTHORITIES

OPINIONS BELOW

The United States District Court for the Central District of California filed its unreported Judgment and Memorandum of Decision and Order on May 27, 1981. They appear at pages 30 to 31 and pages 19 to 29 respectively, of the Appendix.

The Court of Appeals for the Ninth Circuit affirmed that judgment on January 3, 1984. Its memorandum was unreported and is contained in the Appendix at pages 32 to 37.

JURISDICTION

The judgment of the Court of Appeals was entered on January 3, 1984 [Appendix, pp. 32-37.] and a petition for rehearing with suggestion for rehearing en banc was denied on April 25, 1984. [Appendix, p. 38.] The United States Supreme Court has jurisdiction pursuant to 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES

The following constitutional provision is involved in this case:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [United States Constitution, Amendment XIV, Section 1.]

The following local ordinance is involved in this case:

> "The licensee shall not conduct or operate a massage parlor between the

hours of 10:30 p.m. and 7:00 a.m. of any day and shall exclude all customers, patrons and visitors therefrom between those hours." [Los Angeles County Massage Parlor Licensing Ordinance, Section 592.3.]

STATEMENT OF THE CASE

Section 592.3 of the Los Angeles County Massage Parlor Licensing Ordinance provides that:

> "The licensee shall not conduct or operate a massage parlor between the hours of 10:30 p.m. and 7:00 a.m. of any day and shall exclude all customers, patrons and visitors therefrom between those hours."

Petitioners, who have been in the massage business at their present locations for a combined period of thirty-one and one-half years, brought suit under Title 42, United States Code, Section 1983, arguing that Section 592.3 violated the due process and

equal protection guarantees of the fourteenth amendment by unlawfully restricting the hours that massage parlors may be open for business. The evidence before the District Court showed that their businesses are located in commercial districts which are occupied by a wide assortment of "all night" establishments including bars, restaurants, night clubs, convenience stores, adult book stores and adult movie theatres.

Petitioners' massage parlors have not caused any law enforcement problems which differ in any significant degree from those caused by other businesses in the area. In fact, during Petitioners' thirty-one and one-half years in business, none of their employees have ever been convicted of any unlawful act committed upon the premises or arising out of the operation of the business. Although Respondent has contended that Petitioners' massage parlors "require a greater proportionate share of police time" than other businesses in the same general

area, he admitted that he had "no facts" supporting this belief.

REASONS TO GRANT PETITION

A. Introduction

This is not the "typical" massage parlor dispute. In the standard case, a closing hours ordinance is constitutional because it is reasonable to believe that there is increased crime at massage parlors late at night. Although that is the only justification supporting this ordinance, that assumption is not true in this case because the parties stipulated that Petitioners' businesses have not caused any law enforcement problems different from other businesses in the area. Even under the rational basis test, "the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." United States v. Carolene Products Co., 304 U.S. 144, 153-154, (1938). Petitioners

believe that they have met their burden of proof and that their petition for a writ of certiorari should be granted.

The closing hours ordinance here under review, which severely restricts the hours of operation for massage parlors and massage parlors only, was upheld by the District Court based solely on the presumption that the "Los Angeles Board of Supervisors could reasonably have believed that there is an increase in criminal activity in massage parlors during the late evening and early morning hours . . . ." [Appendix, pp. 26]. That judgment was affirmed by the Court of Appeals for the Ninth Circuit which stated "that the ordinance at issue here is reasonably related to a legitimate government interest and does not violate either the due process or equal protection clauses of the fourteenth amendment...it is enough that the ordinance is not palpably unreasonable, arbitrary or capricious and that its enactment is within the police power of Los Angeles County"

[Appendix, pp. 36-37.] The record below, which consists almost entirely of stipulated facts, demonstrates conclusively that this apparently reasonable basis does not exist. Indeed, the record shows the following uncontroverted facts:

1. Petitioners' massage parlors have not caused any law enforcement problems which differ in any significant degree from those caused by other businesses in the general area.

2. During Petitioners' thirty-one and one-half years in business, none of their employees have been convicted of any unlawful act committed upon the premises or arising out of the business conducted thereon.

3. Respondent admitted that he "had no facts" supporting his contention that Petitioners' massage parlors require a greater proportionate share of police time than other businesses in the same area.

These facts -- which, again, are admitted and not contradicted -- prove that there is no

reason to believe that there is "an increase in criminal activity in massage parlors." Stated otherwise, the "facts" on which this classification is based were known by the governmental decisionmaker to be false. Accordingly, the instant ordinance is violative of the due process and equal protection provisions of the Constitution. Lindsley v. National Carbonic Gas Co., 220 U.S. 61, 78 (1911); Vance v. Bradley, 440 U.S. 93, 111 (1979); Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981).

B. A Rational Basis May Not Be Presumed Where, As Here, The Record Establishes That It Does Not Exist

All parties agree that the instant ordinance is an economic regulation and that the standard for evaluating the claim that it violates due process or equal protection is whether a rational basis exists for the police power exercised or the classification established. Autotronic Systems, Inc. v. City of Coeur D'Alene, 527 F.2d 106 (9th Cir. 1975)

(per curiam). This limited standard of review requires courts to presume that the challenged ordinance is valid and to refrain from setting aside a statutory discrimination if any state of facts reasonably may be conceived to justify it. McGowan v. State of Maryland, 366 U.S. 420 (1961).

Nevertheless, the rational basis test remains a test. As stated by this Court, "our cases have not departed from the requirement that the government's chosen means must rationally further some legitimate state purpose." Moore v. City of East Cleveland, Ohio, 431 U.S. 494, 499, n. 6, (1977). Similarly, recent cases have required that the state's legislative objective be articulated. See, City of New Orleans v. Dukes, 427 U.S. 297 (1975); Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976).

Thus, it is clear that the "constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that

those facts have ceased to exist." United States v. Carolene Products Co., 304 U.S. 144, 153-154, (1938); Vance v. Bradley, 440 U.S. 93, 111 (1979) Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464, (1981). This proposition is illustrated by the decision in McGowan v. State of Maryland, 366 U.S. 420, 426, (1961) in which this Court upheld certain exceptions to a Sunday Blue Law, which were challenged on equal protection grounds, noting that "[t]he record is barren of any indication that this apparently reasonable basis does not exist."

The instant case is ultimately decided, therefore, not by determining the validity of the presumption made by the District Court but, rather, by the question whether Petitioners have overcome that presumption by proving that it is factually inaccurate. Petitioners submit that the District Court, and the Court of Appeals, erred by failing even to consider this question. Instead, the Ninth Circuit summarily "concluded," without

any analysis or discussion of the record, "that the ordinance at issue here is reasonably related to a legitimate government interest." [Appendix, p. 36]. That judgment, however, could not be reached properly based on the facts before that Court.

In the section that follows, Petitioners will examine the record in greater detail to demonstrate that the ordinance is irrational because the apparently reasonable presumption upon which the ordinance is predicated, is, in fact, contradicted by the record.

C. The Ordinance, Which Attempts To Combat The High Rate Of Crime At Massage Parlors, Is Irrational Because The Parties Admitted That Massage Parlors Do Not Pose Special Law Enforcement Problems

Respondent, and the courts below, believe that the ordinance is valid because they think that the rate of crime at massage parlors is high. Petitioners acknowledge that this argument appears, at first glance, to be

reasonable and that it could appropriately be accepted as true if the facts established that it was accurate or if the court had been presented with conflicting evidence or even if the record were silent. But such is not the case. The record -- which consists of admitted and uncontroverted facts -- shows that:

One, Petitioners' massage parlors have not caused any law enforcement problems which differ in any significant degree from those caused by other businesses in the general area;

Two, during Petitioners' thirty-one and one-half years in business, none of their employees have been convicted of any unlawful act committed upon the premises or arising out of the business conducted thereon; and

Three, Respondent admitted that he "had no facts" supporting his contention that Petitioners' massage parlors require a greater proportionate share of police time than other businesses in the same area.

The instant ordinance, which requires that massage parlors, but no other businesses, cease operations between the hours of 10:30 p.m. and 7:00 a.m. is supported only by the notion that there is increased criminal activity at massage parlors during the late evening and early morning hours. Petitioners have proven that this assumption is not true.

The flaw in the Court of Appeals' opinion is that it treats the constitutional question as one of law only. As noted previously, however, a factual challenge may always be mounted under the due process and equal protection clauses of the fourteenth amendment. Thus, the error committed below is that neither the Ninth Circuit, nor the District Court, considered whether the apparently reasonable presumption supporting this ordinance could be squared with the facts. Petitioners submit that it cannot, and that their petition for a writ of certiorari should be granted.

D. Conclusion

Section 592.3 of the Los Angeles County Massage Parlor Ordinance is rational and, hence, constitutional, only if it is reasonable to believe that crime at massage parlors creates special problems that require special regulation. Here, that belief is not reasonable because it has been admitted that massage parlors do not pose law enforcement problems different from those of other businesses. Petitioners submit that the courts below erred by failing to consider whether the determination of rationality was consistent with the record.

For all of the foregoing reasons, Petitioner respectfully requests that a writ of certiorari to the Court of Appeals for the Ninth Circuit be issued.

DATED: 30/6/198 GLASSMAN & BROWNING, INC.

By _____
ANTHONY MICHAEL GLASSMAN
STEPHEN J. RAWSON
Attorneys for Petitioners

APPENDIX

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TWENTIETH CENTURY TRAVEL ADVISORS, INC., a California corporation, dba TENDER LOVING CARE; L. A. MARK ROY CORP., a California corporation; dba CIRCUS MAXIMUS; JUNG SIK HAN, an individual, dba TOKYO MASSAGE; and FERNANDO AGUDELO, an individual, dba WEST L. A. MASSAGE, Plaintiffs, v. PETER PITCHESS, individually, and in his official capacity as Sheriff of Los Angeles County, State of California, Defendant.	NO. CV 80-2687-RJK (Gx) MEMORANDUM OF DECISION AND ORDER

The plaintiffs, four massage parlors, Tender Loving Care, Tokyo Massage, Circus Maximus, and West Los Angeles Massage, filed a complaint on June 23, 1980, seeking a judgment declaring Section 592.3 of the Los Angeles County Business Ordinance, Number 5860,

unconstitutional and enjoining enforcement of the ordinance by the defendant, Sheriff Peter Pitchess. Section 592.3 requires massage parlors to cease operation between the hours of 10:30 p.m. and 7:00 a.m. and to exclude all customers, patrons, and visitors between those hours. It is the plaintiffs' contention that Section 592.3 violates the guarantees under the Fourteenth Amendment of the United States Constitution and of California Government Code, Section 51031(e).

On June 24, 1980, this Court issued a temporary restraining order prohibiting enforcement of the ordinance by defendant. The defendant has filed a motion for summary judgment. There being no material issues of fact in dispute between the parties, this matter is appropriate for summary determination. F.R. Civ. P. 56(c).

I. STATE CLAIM

The California Government Code Section 51031, authorizes local legislative bodies to

license massage parlor businesses. Section 51031(e) states:

> The ordinance may condition the issuance of a license to engage in the business of massage upon proof that a massage business meets the reasonable standards set by the ordinance, which may include, but need not be limited to, the following areas:
>
> . . .
>
> (e) hours of operation of the massage business.

The California Appellate Court in Brix v. City of San Rafael, 92 Cal. App. 3d 51, 154 Cal. Rptr. 647 (1979), found that an ordinance, identical to the one herein, was "reasonable" within the meaning of Section 51031(e), and that the ordinance was therefore a valid exercise of the city's power. The court felt that "The reasonableness of the ordinance is underscored by the fact that massage establishments are permitted to be

open 15-1/2 hours each day, thereby providing ample time, for any person so inclined, to obtain a massage." Id. 154 Cal. Rptr. at 650. This Court similarly finds that Section 592.3 is a proper exercise of Los Angeles County's power under California Gov't Code Section 51031(e). The Court therefore must consider plaintiffs' contention that the ordinance violates the Fourteenth Amendment.

II. FEDERAL CLAIMS

When a statute or ordinance regulating economic activity is challenged on Fourteenth Amendment due process or equal protection grounds, the courts employ minimal scrutiny. See, e.g., New Orleans v. Dukes, 427 U.S. 297, 96 S.Ct. 2513 (1976); Ferguson v. Skrupa, 372 U.S. 726, 83 S.Ct. 1028 (1963); Williamson v. Lee Optical Co. 348 U.S. 483, 75 S.Ct. 461 (1955); Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 72 S.Ct. 405 (1952). If the regulation bears a rational relation to a legitimate state end, it is upheld. See, e.g.

Nebbia v. New York, 291 U.S. 502, 54 S.Ct. 505 (1934). In this regard, the Supreme Court has said that "[a] law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." Williamson v. Lee Optical Co., 348 U.S. 483, 487-88 (1955.) The courts are not concerned with the wisdom, need, or appropriateness of legislation and will not strike down laws regulating business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought. Id.

Applying the aforementioned view, the Supreme Court has upheld numerous regulatory laws against both due process and equal protection attacks. For example, in Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421 (1952), the Court upheld a law that required employers to give their employees four hours

off from work with full pay in order to vote. In that case, the employers were paying wages for a period in which the employees were performing no services, and, moreover, there was no evidence that the employees were spending any of the time at the polls. However, the Court held that the law bore a rational relation to a legitimate end, removing a practical obstacle to getting out the vote.

In Ferguson v. Skrupa, 372 U.S. 726 (1963), the Court upheld a Kansas law prohibiting anyone from engaging in the business of debt adjusting except as an incident to the lawful practice of law. That law had the effect of putting many persons engaged in debt adjusting out of business. There was no evidence that persons, other than lawyers, who engage in debt adjusting were doing anything immoral or dangerous. Nevertheless, the Court found no violation of due process or equal protection and said that Kansas was free to decide for itself what legislation was needed

to deal with the business of debt adjusting.

In New Orleans v. Dukes, 427 U.S. 297 (1976), the Court found that a New Orleans provision exempting only those pushcart food vendors who had been in business for eight years prior to January 1, 1972 from a prohibition against such vendors in the French Quarter did not violate equal protection or due process. That provision put all vendors who had been in business less than eight years out of business. Still, the Court reasoned that the law furthered the purpose which the city had identified as its objective: to preserve the appearance of the Quarter. Yet, there was no showing that vendors who had been in the French Quarter more than eight years prior to the enactment of the provision were operating in a manner more consistent with the Quarter's traditions than vendors who had been there less than eight years.

The plaintiffs' claim that they do not cause any more law enforcement problems than other late night businesses and, thus, should

not be treated differently, is irrelevant. A law is constitutional even though it is not logically consistent with its aim in every respect, so long as the legislature believes that there is an evil needing correction and believes that the particular legislative measure is a rational way to correct it. Williamson v. Lee Optical Co., 348 U.S. 483 (1955). In the instant case, the Los Angeles Board of Supervisors could reasonably have believed that there is an increase in criminal activity in massage parlors during the late evening and the early morning hours and that the ordinance would serve to reduce the risk of such illegal activity. In fact, the defendant claims that massage parlors are treated differently than supermarkets, theatres, laundromats, and donut shops because massage parlors present a greater potential for violations of public health, morality, and safety laws. Furthermore, the defendant asserts, Section 592.3 will enable the Sheriff's Department to decrease the use of

their limited resources at massage parlors and to utilize them in other areas.

The plaintiff's contention, that they will lose between 65 percent and 80 percent of their patronage if they have to close between the hours of 10:30 p.m. and 7:00 a.m., is also irrelevant. The previously discussed cases make it clear that a law will not be invalidated if it is rationally related to legitimate end, as is Section 592.3, even though it may harm the business interests of specific persons.

Finally, the Fifth Circuit, in Harper v. Lindsay, 616 F.2d 849 (5th Cir. 1980) and in Pollard v. Cockrell, 578 F.2d 1002 (5th Cir. 1978), twice has upheld the validity of similar ordinances that prohibited the operation of massage parlors for specified hours of the late evening and early morning. The language employed in Pollard v. Cockrell, Id. at 1013, is particularly persuasive.

> [T]he distinction between massage parlors and the other institutions

is not arbitrary or irrational . . . the city council probably reasoned that . . . [other institutions dealing with therapy and grooming] are not likely to pose the danger--which the ordinance was intended to alleviate--of serving as subterfuges for prostitution . . . . appellants argue that [the section], regulating hours of operation, unconstitutionally discriminates against massage parlors because other establishments performing similar services are not similarly burdened . . . this argument must fail. We note that even those cases invalidating massage parlor ordinances under [no longer valid] substantive due process principles have conceded that regulation of operating hours would be permissible.

Therefore, it is the determination of this Court, that the ordinance in question, regulating the hours of operation of massage parlors, does not violate either California law or the United States Constitution. Thus, on the undisputed facts, there are no grounds upon which this Court may grant the relief sought by plaintiffs. Accordingly, it is hereby ORDERED that defendant's motion for summary judgment is GRANTED. It is further ORDERED that the preliminary injunction, previously ordered to restrain enforcement of the ordinance, is hereby VACATED. It is further ORDERED that this action is DISMISSED WITH PREJUDICE.

The Clerk shall send, by United States mail, a copy of this Memorandum of Decision and Order to counsel for the parties.

DATED: May 22, 1981.

ROBERT J. KELLEHER
United States
District Judge

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TWENTIETH CENTURY TRAVEL ADVISORS, INC., a California corporation, dba TENDER LOVING CARE; L. A. MARK ROY CORP., a California corporation; dba CIRCUS MAXIMUS; JUNG SIK HAN, an individual, dba TOKYO MASSAGE; and FERNANDO AGUDELO, an individual, dba WEST L. A. MASSAGE,	NO. CV 80-2687-RJK (Gx)
Plaintiffs,	JUDGMENT
v.	
PETER PITCHESS, individually, and in his official capacity as Sheriff of Los Angeles County, State of California,	
Defendant.	

Defendant having filed a motion for summary judgment in his favor, pursuant to F.R. Civ. P. 56 (c), on the grounds that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law,

Now, on considering the motion, points and authorities, and other papers on file herein, due deliberation having been had, and

in accord with the Memorandum of Decision and Order filed herein this date,

It is hereby ORDERED, ADJUDGED, AND DECREED that defendant's motion for summary judgment be, and the same hereby is, GRANTED. It is further ORDERED, ADJUDGED, AND DECREED that this action be DISMISSED WITH PREJUDICE.

The Clerk shall send, by United States mail, a copy of this Judgment to counsel for the parties.

DATED: May 22, 1981.

ROBERT J. KELLEHER
United States District

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TWENTIETH CENTURY TRAVEL ADVISORS, INC., et. al.,	)	
Plaintiffs-Appellants,	)	NO. CA 81-5622
vs.	)	DC No. CV 80 2687
PETER J. PITCHESS,	)	
Defendant-Appellee.	)	MEMORANDUM

Appeal from the United States District Court
for the Central District of California
Honorable Robert J. Kelleher, District Judge
Presiding
Submitted September 30, 1982
Originally Decided February 4, 1983
Rehearing Granted and Disposition withdrawn
September 20, 1983
Decided: January 3, 1984*

BEFORE: CHOY, ALARCON and CANBY, Circuit Judges

* The panel finds this case appropriate for submission without argument pursuant to 28 U.S.C.A. 9th Cir. R. 3(a) and Fed. R. App. P. 34(b).

Plaintiffs-appellants, Twentieth Century Travel Advisers Inc., (Twentieth Century), brought suit under 42 U.S.C. Section 1983 for injunctive and declaratory relief. Twentieth Century attacked the constitutionality of Los Angeles County Massage Parlor Licensing Ordinance Section 592.3 that restricts the hours that such establishments may be open for business. The district court initially entered a temporary restraining order prohibiting the defendant, the Sheriff of Los Angeles County, from enforcing Section 592.3. That order was followed by a preliminary injunction. Subsequently, however, the district court granted the Sheriff's motion for summary judgment from which Twentieth Century appeals. We affirm.

Twentieth Century argues that Section 592.3 offends the due process and equal protection clauses of the fourteenth amendment. The standard for evaluating ordinances claimed to be violative of due process or equal protection is whether a

rational basis exists for the police power exercised or classification established by the ordinance. Autotronic Systems, Inc. v. City of Coeur D'Alene, 527 F.2d 106, 108 (9th Cir. 1975)(per curiam). Appellants do not contest this minimal standard but contend that the district court made an erroneous finding "that the Los Angeles County Board of Supervisors could reasonably have believed that there is an increase in criminal activity in massage parlors during the late evening and the early morning hours and that the ordinance would serve to reduce risk of such illegal activity."

Twentieth Century relies on People v. Glaze, 27 Cal. 3d 841, 614 p. 2d 291, 166 Cal. Rptr. 859 (1980) and Pentco, Inc. v. Moody, 474 F. Supp. 1001 (S.D. Ohio 1978). We find Glaze distinguishable, and we are not persuaded by Pentco.

In Glaze, an ordinance restricting the operating hours of picture arcades was held unconstitutional as a violation of the first

amendment. A higher standard of review is required in cases involving restrictions of activities protected by the first amendment and no first amendment claim is made here. The Glaze opinion states unequivocally that "[t]he law is clear that a municipality has the general power to regulate commercial businesses where the regulation is reasonable and non-discriminatory. For example, it is permissible under a municipality's police powers to reasonably restrict the hours of operation of an economic enterprise." Glaze, 614 P.2d at 294.

In Pentco, Inc., the United States District Court for the Southern District of Ohio, struck down as arbitrary and not reasonably related to a legitimate government interest a section of an ordinance that restricted the operating hours of a massage establishment. The court relied on an Ohio Supreme Court case concerning operating hours for barbershops. But a regulation's reasonableness depends on the nature of the

regulated business and "the degree of threat that the operation of such business presents to the tranquility, good order, and well-being of the community at large. So long as a 'patent relationship between the regulations and the protection of the public health, safety, morals, or general welfare' exists, the regulations will be considered reasonable." Brix v. City of San Rafael, 92 Cal. App.3d 47, 154 Cal. Rptr. 647, 650 (1979), quoting 7978 Corporation v. Pitchess, 41 Cal.App. 3d 42, 115 Cal.Rptr. 746, 749 (1974).

We conclude that the ordinance at issue here is reasonably related to a legitimate government interest and does not violate either the due process or equal protection clauses of the fourteenth amendment. The majority of courts that have considered this issue agree. See, e.g., Harper v. Lindsay, 616 F.2d 849 (5th Cir. 1980); Saxe v. Breir, 390 F.Supp. 635 (E.D. Wis. 1974). The wisdom of the ordinance or its usefulness in achieving its objectives is not for us to decide; it

is enough that the ordinance is not palpably unreasonable, arbitrary or capricious and that its enactment is within the police power of Los Angeles County.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TWENTIETH CENTURY TRAVEL ADVISORS, INC., et al.	)	NO. 81-5622
Appellants,	)	
vs.	)	Filed April 25, 1984
PETER PITCHESS etc.,	)	
Appellees.	)	

BEFORE: CHOY, ALARCON and CANBY, Circuit Judges:

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for an en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.